THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.25572 OF 2005

18.03.2006

Between:

Mahankali Ramalingam, S/o.Guravaiah

And another

… Petitioners

AND

The Election Authority, Commissioner and Director of

Municipal Administration, A.P., B.R.K.R. Bhavan, Hyderabad

And another

… Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

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ORDER:

The two petitioners are residents of Piduguralla. The elections to Piduguralla Nagar Panchayat were held in accordance with A.P. Municipalities Act, 1965 (the Act, for short) and A.P. Municipal Councils/Nagarpanchayats (Conduct of Election) Rules, 1965 on 24.9.2005. So as to co-opt a person as a member of Municipal Council, the second respondent issued a notice on 08.11.2005 calling applications from persons having special knowledge and experience in municipal administration. The said notice was issued in accordance with Rule 5(1) of the Andhra Pradesh Municipal Councils/Nagar Panchayats (Co-option of Members having Special Knowledge or Experience in Municipal Administration) Rules, 1995 (the Rules, for short). The first petitioner, namely, Mahankali Ramalingam, claims to be a former member of Gram Panchayat, Piduguralla during the period from 1988 to 1995. The second petitioner

was allegedly a former member of Mandal Parishad Territorial Constituency (MPTC) during 1995-2000. They, therefore, submitted applications to the second respondent for being considered for cooption. They allege that though fifteen persons submitted applications before the stipulated time i.e., 16.11.2005, the second respondent decided to place applications of two persons, Sri Koppula Venkata Subba Rao and Sri Katta Venkateswar Reddy, only before the Municipal Council and accordingly the respondents issued a notice of meeting dated 22.11.2005 proposing to convene the meeting of Municipal Council on 01.12.2005. Aggrieved by the same, the petitioners approached this Court. They contend that when once applications are made, the second respondent is bound to place all the applications before the Council and the applications made by the petitioners cannot be rejected by the second respondent.

This Court while admitting the writ petition on 30.11.2005 stayed the meeting of the Municipal Council scheduled on 01.12.2005. When the matter was again listed on 10.3.2006 for further orders, this Court directed the learned Standing Counsel for Piduguralla Nagar Panchayat to file counter with para-wise remarks or produce the record.

Learned Counsel for the petitioners submits that when once a person is eligible as per Rule 3 of the Rules, the second respondent has to place all the applications before the Municipal Council, which alone is competent to co-opt a person having special knowledge in municipal administration as member of the Council. According to the learned Counsel at the stage of scrutiny of the applications, the same cannot be rejected. **Per contra**, learned Standing Counsel submits that the applications of the petitioners were rejected, as they did not fill up the applications showing that the experience certificate is enclosed. According to the learned Standing Counsel, though there was a requirement on the part of the applicant to mention whether experience certificate is enclosed or not, both the petitioners did not mention whether the experience certificate is enclosed or not. Therefore, at the stage of scrutiny, the Municipal Council rejected their applications. He further submits that under Rule 5(2) of the Rules, it is incumbent on the part of the Commissioner to scrutinize the applications.

Section 5 of the Act deals with the constitution of the Municipal Council. Under Section 5(2)(i) of the Act, the Council shall consist of such number of elected members as may be notified by the government from time to time and other categories of members as mentioned in Section 5(2)(ii), (iii), (iv), (v) and (vi) of the Act. Under Section 5(2)(v) of the Act, the Municipal Council is required to co-opt a person having special knowledge or experience in the municipal administration, as member of the Council in accordance with the procedure prescribed. The Rules were made for the said purpose. Rule 3 of the Rules lays down the eligibility criteria for a person to be co-opted under Section 5(2)(v) of the Act. Rule 5 of the Rules contains the procedure and the same reads as under.

5. Procedure for Co-option of Members:-

1. The Commissioner shall, within sixty (60) days from the date of first meeting of the Council to be appointed by the Election Authority call for

applications from the eligible candidates by giving wide publicity in newspapers giving seven days time for submission of applications.

2. The applications received shall be scrutinized by the Municipal Commissioner within three (3) days from the last date of receipt of applications.

3. The list of eligible applicants shall be placed before the Municipal Council at its Special meeting to be convened by the Chairperson within a fortnight from the last date fixed for receipt of applications by giving not less than seven (7) clear days notice to the elected members including Ex-officio members:

Provided that no business shall be transacted at the meeting unless there be present at least one-half of the sanctioned strength of the Council including Ex-officio Members:

Provided further that where members could not be co-opted in the first two meetings for want of quorum, the members shall be co-opted in the third meeting even without quorum.

4. If within half-an-hour after the time appointed for the Special meeting the quorum is not present, the meeting shall stand adjourned unless all the Members present agree to wait longer.

A plain reading of the above rule shows that there are three stages to be followed before a person is co-opted as a member of the Council under Section 5(2)(v) of the Act. In the first stage, within sixty days from the date of first meeting of the Council, the Municipal Commissioner shall call for the applications from the eligible persons by giving wide publicity in the newspapers giving seven days time for submission of applications. This is contemplated under Section 5(1) of the Act. In the second stage, as required under Section 5(2) of the Act, the Commissioner shall have to scrutinize all the applications received, within three days from the date of receipt of the applications. This scrutiny shall have to be necessarily with reference to Rule 3 of the Rules, which lays down the eligibility qualifications for a person to be co-opted and it may also be with reference to the qualifications/disqualifications prescribed by the Act for being elected or for being continued as a member of the Municipal Council, as contemplated under Sections 13 to 16 of the Act. The scrutiny of the applications with reference to the qualifications of a person for being elected as a member of the Council is not with reference to finding the suitability of a person for being elected as a member. The qualifications are altogether different from suitability. It is only for the Council to decide whether a person is being suitable or not by a democratic process. Indeed as held by the Division Bench of this Court, to which I was a member, in **Yeturi Pitchi Reddy v Government of Andhra Pradesh**, co-option of the members under the Rules does not amount to election and the co-option of the members by the Council has to be made with regard to the special knowledge or experience of the applicant in the municipal administration. In the third stage, all the applications have to be placed before the Council at its special meeting for co-option of a person under the category mentioned in Section 5(2)(v) of

the Act.

While calling for applications under Rule 5(1) of the Rules, every applicant was required to apply in a prescribed form, which was made part of the notification. Below column 4 of the notification, it is clearly mentioned that all the certificates in proof of the details mentioned in the application have to be compulsorily enclosed. This is required to enable the Commissioner to properly scrutinize the applications to find out whether or not the applicant is having eligible qualifications. In this case, it is the contention of the respondents that both the petitioners have not mentioned, in their applications, whether certificates are enclosed or not. This Court has perused the file containing fifteen applications seeking co-option. It is interesting to note that except Sri Koppula Venkata Subba Rao, none of the applicants mentioned in their applications that certificates are enclosed, though most of them enclosed necessary certificates. Therefore, the reason for rejecting the applications of the petitioners cannot be sustained because if the same is sustained, it would be discriminatory, to apply different standards to the petitioners as well as the other applicants. After verification of the entire record, this Court finds that the first petitioner is not even qualified, as he did not produce any certificate in evidence of his claim that he was a member of Gram Panchayat, Piduguralla from 1988 to 1995. The certificate filed by him only shows that he is a voter. Insofar as the second petitioner is concerned, he has enclosed the certificate issued by the Mandal Parishad Development Officer to the effect that he was a member of MPTC from 1995-2000 and, therefore, rejection of his application cannot be sustained. This Court has taken up this exercise having regard to the decision of the Division Bench of this Court referred to herein above and also having regard to the fact that rejection of an application for co-option cannot be subject matter of an election petition as contemplated under the Election Rules.

In the result, the writ petition is partly allowed, directing the second respondent to include the name of the second petitioner in the list of eligible candidates while convening special meeting of the Municipal Council for co-option of the members under Section 5(2)(v) of the Act. The learned Standing Counsel submits that a minimum period of two weeks is required for convening the meeting. Therefore, there shall be a direction to the respondents to convene special meeting of Piduguralla Nagar Panchayat within a period of two weeks from the date of receipt of a copy of this order. Insofar as the claim of the first petitioner is concerned, this Court does not find any infirmity in the impugned action.

The writ petition, with the above observations and directions, is partly allowed. No costs.

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(**V.V.S.RAO,J**)

March 18, 2006.

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